

# **ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW AMENDMENT OF THE CASTLE ROCK SHORELINE MASTER PROGRAM**

SMP Submittal accepted November 2, 2022, Ordinance No. 2022-03  
Prepared by Department of Ecology January 17, 2023

## **Use of this Document**

The Department of Ecology (Ecology) *Findings and Conclusions* (Presented herein as Attachment A) provides the factual basis for our decision on City of Castle Rock's (City) proposed Shoreline Master Program (SMP) periodic review and amendment. This document is divided into three sections: Findings of Fact regarding the periodic review history and process, Conclusions of Law, and Decision.

## **Brief Description of Proposed Amendment**

Castle Rock is conducting a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of the joint process per WAC 173-26-104(3)(b), on February 2, 2022, Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated all required and recommended changes provided as part of the initial determination.

## **FINDINGS OF FACT**

### **Need for amendment**

The City's SMP regulates use and development activities along approximately 6 miles of shoreline including the Cowlitz River, a shoreline of statewide significance, as well as limited portions of Salmon Creek and Arkansas Creek. Castle Rock comprehensively updated their master program in September 2016. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the City's Shoreline Master Program pursuant to RCW 90.58.080(4).

### **SMP provisions to be changed by the amendment as proposed**

The City prepared a checklist that documents the review and proposed revisions. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the last SMP amendment, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

The Castle Rock SMP is a standalone document containing goals, policies and regulations, and the official shoreline map. The SMP is referenced by the City's development regulations at Castle Rock Municipal Code Chapter 18.08 Shoreline Master Program (CRMC 18.08) that codifies and implements the SMP Adoption Ordinance. Goals and policies are set forth in SMP Chapter 4 and critical area regulations are established at Chapter 6.3 and Appendix B. The boundaries of the Shoreline Management Area and Shoreline Environment Designations are established in the SMP at Chapter 3.1, Chapter 5, and depicted in the Appendix A maps.

In addition to minor, non-substantive changes for document construct/organization, general edits to correct/update syntax and membership names, and formatting/citation corrections, the following sections of the City of Castle Rock SMP are proposed for change:

*Chapter 2. DEFINITIONS*

- ‘Development’ – Clarify language about dismantling/removal of structures.
- ‘Floating On-Water Residences’ – Add term with current RCW 90.58.270 definition.
- ‘Floodway’ – Clarify definition for reliance on FEMA FIRMs.
- ‘Non-conforming Development/Structure’, ‘Non-conforming Lot’, ‘Non-conforming Use’ – Add three terms and their WAC 173-27-080 definitions.
- ‘Substantial Development’ – Update the fair market value cost threshold that includes reference to OFM’s 5-year adjustments.

*Chapter 3. APPLICABILITY, SHORELINE PERMITS, AND EXEMPTIONS*

Add list of five SMA/SMP exceptions per WAC 173-27-044 and -045 and remove duplicative items; Better clarify the distinction between harvest-only actions and other forest practices development per WAC 173-26-241(3)(e).

Add summary list of exempt activities in support of the citation to WAC 173-27-040, replacing Appendix D; Delete the confounding reference to WAC 173-27-045.

Replace nonconforming use and development provisions with default standards of WAC 173-27-080.

*Chapter 4. SHORELINE MASTER PROGRAM GOALS AND POLICIES*

Add a policy about preparing a levee management plan consistent with SMA/SMP and add a policy about public access planning and prioritization consistent with the planning process of WAC- 173-26-221(4)(c).

Remove Agriculture policy to support new agricultural activities; Delete Residential Development policy that incorrectly recognizes single-family uses as preferred; Add policy to explicitly prohibit new over-water residences.

*Chapter 5. SHORELINE ENVIRONMENT DESIGNATIONS AND SHORELINES OF STATEWIDE SIGNIFICANCE*

Add citations to SMA and WAC 173-22 for mapping error boundary interpretation and add boundary description details for parallel designations.

*Chapter 6. GENERAL SHORELINE REGULATIONS*

Add language to explicitly establish the ‘no net loss’ (NNL) standard for protection of shoreline critical areas per WAC 173-26-221(2)(a)(ii).

*Chapter 7. SPECIFIC SHORELINE USE REGULATIONS*

Remove pile spacing provision for residential accessory docks and add provisions about new and existing floating homes and floating on-water residences per RCW 90.58.270.

*Chapter 8. SHORELINE ADMINISTRATION AND ENFORCEMENT*

Add permit filing provision per WAC 173-27-130 and WSDOT special project review procedures.

*Appendix A. Shoreline Environment Designations Map* – To supplement the SED overview map, add four (4) break-out maps showing the northern, eastern, and southern levee sections at a finer scale to better depict SED boundaries, the levee, parcels, trail segments, and ownership.

*Appendix B. Shoreline Critical Areas Regulations*

Revise the phrasing of two provisions for accuracy of the range of habitat rating scores on Category II and III wetlands and add wetland mitigation banking provision.

*Appendices C – E* – Appendix C. Shoreline Restoration Plan; Appendix D. Exemptions from a Shoreline Substantial Development Permit; and Appendix E. Aerial Photos of Castle Rock Shorelines September 2014 (CD Format).

Remove these non-regulatory components from the SMP to be stand-alone companion documents prepared for the previous comprehensive update.

## Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. A key element of the public participation strategy is the City's [website](https://ci.castle-rock.wa.us/index.htm)<sup>1</sup> where review documents were posted during the process.

The City used Ecology's Periodic Review Checklist of legislative and rule amendments to review changes to Chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). And the City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii).

The City consulted with Ecology and solicited comments throughout the review process, including opportunities to comment on draft materials from January to June 2021.

On June 23, 2021, the City prepared a SEPA checklist with non-project supplement for the proposed SMP amendment. The City issued a Determination of Non-Significance (DNS) by filing to the online SEPA Register and email distribution to agency contacts on July 8, 2021, and publishing notice in *The Daily News* on July 13, 2021 inviting comment by August 13, 2021, concurrent with the joint comment period.

The City submitted evidence of a 60-day Notice of Intent to Adopt provided to Department of Commerce on July 8, 2021.

### *Joint Local-State comment period under WAC 173-26-104*

As part of the periodic review process, the City chose to utilize the joint review process set forth in WAC 173-26-104. The City held a joint local-state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The joint comment period began on July 13, 2021 and continued through August 13, 2021. A joint public hearing before the Planning Commission was held on August 18, 2021, conducted both in person at the Castle Rock Senior Center and virtually via *GoTo Meeting*.

The City provided notice to local parties, including a statement that the hearing was intended to address the periodic review, in accordance with WAC 173-26-090(3)(c)(ii). The City submitted evidence indicating that notice of the hearing was published in *The Daily News* on July 13, 2021.

Ecology distributed notice of the joint comment period to state interested parties on July 8, 2021, including separate invitations to provide comment and consult government to government sent to the Cowlitz, Grand Ronde, and Yakama Tribes.

The City accepted comments on the proposed SMP amendment during the 30-day comment period. The WA Dept. of Fish and Wildlife (WDFW) provided a letter thanking the City for the opportunity to comment but indicating that they did not have any comments on the draft amendment. The WDFW letter also highlights their Priority Habitats and Species (PHS) Riparian Ecosystems *Volume 1: Science Synthesis and Management*

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<sup>1</sup> <https://ci.castle-rock.wa.us/index.htm>

*Implications and Volume 2: Management Recommendations* publications and indicates they plan to reach out to the City in the future to discuss how these newer PHS resources can best be applied within the City.

No verbal testimony was provided at the public hearing. After close of the public hearing on August 18, 2021, the Planning Commission recommended approval of the proposed amendment to City Council.

City staff considered all comments received and prepared a Comment Summary Response Matrix with the City's responses to issues raised.

## Initial Determination of Consistency

As part of the joint review process, the City submitted the proposed amendment to Ecology for initial state review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The proposed SMP amendment submittal was received by Ecology on November 22, 2021 and was verified as complete on December 14, 2021. This began Ecology's initial consistency review.

### *Initial review and required/recommended changes*

Ecology considered the proposed amendment, comments received, and the City's response, and finds the City's responses are consistent with the statutory obligations for conducting periodic reviews.

While the proposed amendment was largely consistent with the SMA and SMP Guidelines, Ecology's initial review identified four (4) required changes regarding: floating on-water residences, shoreline environment designation boundaries/mapping errors, and the no net loss protection standard for critical areas. Ecology also identified fifteen (15) recommended changes to address clarifications and other improvements to the SMP's background section, applicability section, substantial development exemptions, prohibition of new overwater residences, boundary descriptions for parallel environment designations, WSDOT project review provisions, the Appendix A SED maps, and Appendix B Critical Area Regulations. As a common practice for 'no surprises' collaboration with our local government partners, Ecology conferred with the City's contract planner on January 10 and 26, 2022 to discuss the issues of concern and obtain support for the proposed solutions, prior to sending our initial determination. City staff concurred with the pending changes and path forward.

On February 2, 2022, we provided the City a formal written statement documenting our initial determination of consistency finding the SMP amendment consistent with the SMA and applicable guidelines, subject to four (4) required changes, and recommending fifteen (15) additional changes to improve clarity and aid implementation. After review by Ecology of the complete initial record submitted and all comments received, Ecology determined that the City's proposed amendment, subject to and including Ecology's required changes, are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through -251 and -020, Definitions). We concluded that if the issues identified within our required and recommended changes were resolved prior to local adoption, we anticipate being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

Upon receipt, City staff considered our Initial Determination and then presented the amendment package to City Council for their review and approval, proposed as the Planning Commission recommendation plus all of Ecology's required and recommended changes.

## Final Submittal

City Council considered the proposed amendment, comments received, and Ecology's initial determination at a regular meeting on April 25, 2022. With passage of Ordinance No. 2022-03 on May 9, 2022, the City Council adopted the SMP amendment as proposed, including all the required and recommended changes of Ecology's initial determination. Council authorized staff to forward the SMP submittal package to Ecology for formal approval. The City's final submittal was received by Ecology on October 24, 2022 and determined to be complete on November 2, 2022.

## Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

## Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

## Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on July 8, 2021. Ecology did not comment on the DNS.

## Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared by the City in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

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City of Castle Rock SMP Periodic Review Amendment

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting open meetings and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

## DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.